

ORDINANCE No. 2069

AN ORDINANCE AMENDING TITLE IV OF THE NEWPORT MUNICIPAL CODE TO REQUIRE A MEDICAL MARIJUANA FACILITIES ENDORSEMENT FOR MEDICAL MARIJUANA FACILITIES OPERATING WITHIN THE CITY OF NEWPORT, OREGON, REPEALING THE CITY OF NEWPORT'S TEMPORARY MORATORIUM ON THE OPERATION OF MEDICAL MARIJUANA FACILITIES WITHIN THE CITY

Whereas, during the 2013 Regular Legislative Session, the Oregon Legislature passed HB 3460, which allows for the establishment and registration of medical marijuana facilities; and

Whereas, HB 3460 took effect March 1, 2014, and the Oregon Health Authority began accepting applications for registration of medical marijuana facilities on March 3, 2014; and

Whereas, marijuana is classified as a Schedule I controlled substance under the Federal Controlled Substances Act, the use, possession, and sale of which is currently illegal under federal law; and

Whereas, this conflict between state and federal law creates uncertainty about cities' ability to regulate medical marijuana facilities within their boundaries in compliance with both state and federal law; and

Whereas, pursuant to Article IX, Section 2 of the Oregon Constitution and the Newport Charter, the City of Newport is a home rule municipality with all the powers that the constitutions, statutes, and common law of the United States and the State of Oregon expressly or impliedly grant or allow the City; and

Whereas, the 2014 Oregon Legislature approved Senate Bill 1531, which explicitly allows cities in Oregon to adopt reasonable regulations on the operation of medical marijuana facilities, including: reasonable limitations on the hours during which a medical marijuana facility may be operated; reasonable limitations on where a medical marijuana facility may be located within an agricultural, industrial, commercial, or mixed use zone; and reasonable conditions on the manner in which a medical marijuana facility may dispense medical marijuana; and

Whereas, SB 1531 also allows cities to impose moratoria on the operation of medical marijuana facilities within the jurisdiction of the City until May 1, 2015; and

Whereas, on April 7, 2014, the City of Newport adopted Ordinance No. 2063, declaring a moratorium on the operation of medical marijuana facilities within the City of Newport;

Whereas, the City Council requested that its Planning Commission and Business License Ordinance Work Group conduct public meetings to determine how the regulatory options outlined in Senate Bill 1531 should be exercised, and recommendations from each of these bodies have informed the development of new business license endorsement standards; and

Whereas, once business license endorsement standards for the operation of medical marijuana facilities are effective, the City will no longer need to maintain a moratorium on the establishment of such facilities within its corporate limits.

Now, therefore, the City of Newport ordains as follows:

Section 1. Title IV of the Newport Municipal Code is hereby amended to add the following:

CHAPTER 4.20 MEDICAL MARIJUANA FACILITIES

4.20.010 Definitions

The following definitions apply within this chapter:

Medical Marijuana Facility: a facility licensed by the Oregon Health Authority to:

1. Accept the transfer of usable marijuana and immature marijuana plants from a registry identification cardholder, the designated primary caregiver of a registry identification cardholder, or a person responsible for a marijuana grow site to the medical marijuana facility; or
2. Transfer usable marijuana and immature marijuana plants to a registry identification cardholder or the designated primary caregiver of a registry identification cardholder.

Medical Marijuana Facility Endorsement: a business license endorsement issued by the City of Newport to a Medical Marijuana Facility pursuant to the terms and conditions of this chapter.

Person Responsible for a Medical Marijuana Facility: an individual who owns, operates, or otherwise has legal responsibility for a Medical Marijuana Facility and who has been approved by the Oregon Health Authority.

Registry Identification Card: a document issued by the Oregon Health Authority that identifies an individual authorized to engage in the medical use of marijuana and, if the individual has a designated primary caregiver under ORS 475.312, the individual's designated primary caregiver.

Registry Identification Cardholder: an individual who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of

medical marijuana may mitigate the symptoms or effects of the individual's debilitating medical condition, and who has been issued a registry identification card by the Oregon Health Authority.

4.20.015 Medical Marijuana Facility Endorsement Requirement

No person shall establish, conduct, maintain, manage, or operate a Medical Marijuana Facility in the City of Newport without a valid business license issued by the City of Newport pursuant to chapter 4.05 of this Title and a Medical Marijuana Facility Endorsement issued by the City of Newport pursuant to this chapter.

4.20.020 Application Requirements

- A. The Person Responsible for a Medical Marijuana Facility must apply for a Medical Marijuana Facility Endorsement on a form provided by the City. In addition to the information required by section 4.05.030 of this Title, an applicant for a Medical Marijuana Facility Endorsement must provide the City with the following information:
1. The name and contact information (including at least a telephone number) of the Person Responsible for the Medical Marijuana Facility;
 2. The address or location of the Medical Marijuana Facility;
 3. Proof of registration of the Medical Marijuana Facility by the Oregon Health Authority at the location indicated on the application, including the Medical Marijuana Facility's registration number;
 4. Criminal background check requests, on a form provided by the City, from the Person Responsible for the Medical Marijuana Facility and any employees of the Medical Marijuana Facility; and
 5. The executed agreement required by section 4.20.025 of this chapter.

4.20.025 Agreement

The City will not issue a Medical Marijuana Facility Endorsement unless and until the Person Responsible for the Medical Marijuana Facility submits an executed agreement, on a form required by the City, agreeing to the following conditions:

1. The Person Responsible for the Medical Marijuana Facility and any employees working at the Medical Marijuana Facility will cooperate with the City during an inspection authorized by section 4.20.050 of this Title;
2. The City will have the same access to any and all video surveillance records and recordings of the Medical Marijuana Facility as the Oregon Health Authority does pursuant to OAR 333-008-1180(2)(e);

3. The City will have the same access to any and all documentation required to be maintained under the rules adopted by the Oregon Health Authority as the Oregon Health Authority does pursuant to OAR 333-008-1210(5);
4. The Person Responsible for the Medical Marijuana Facility will direct the security company required by OAR 333-008-1150(4)(b) to notify the City of Newport Police Department any time the alarm system required by OAR 333-008-1150 is triggered at the Medical Marijuana Facility;
5. The Person Responsible for the Medical Marijuana Facility understands and agrees that neither the issuance of a business license nor the issuance of a Medical Marijuana Facility Endorsement constitute a permit to engage in any activity prohibited by law or as a waiver of any other regulatory or license requirement imposed by the City or by any federal, state, or local law; and
6. The Person Responsible for the Medical Marijuana Facility agrees to notify the City of any employees hired by the Medical Marijuana Facility after issuance of the Medical Marijuana Facility Endorsement and prior to their first day of employment, will provide the City with criminal background check requests, on a form provided by the City, from the new employees.

4.20.030 Background Checks

The City of Newport Police Department will conduct background checks pursuant to this chapter to determine whether an individual has been convicted in any state of the manufacture or delivery of a controlled substance designated in Schedule I or Schedule II of Title 21, Chapter II, Part 1308 of the Code of Federal Regulations:

1. Once or more within the last five years; or
2. Twice or more in the individual's lifetime.

4.20.035 Fees

An applicant for a Medical Marijuana Facility Endorsement must pay a surcharge in an amount established by resolution of the City Council in addition to the business license application fee established under section 4.05.020 of this Title.

4.20.040 Issuance

A. A Medical Marijuana Facility Endorsement will only be issued if:

1. The application is complete and accurate;
2. The agreement required by section 4.20.025 is fully executed;

3. The Medical Marijuana Facility has been registered by the Oregon Health Authority at the location indicated in the application;
4. The applicant is otherwise eligible for a City of Newport business license issued under Chapter 4.05 of this Title;
5. The applicant has paid all the required fees; and
6. Neither the Person Responsible for the Medical Marijuana Facility nor any employee of the Medical Marijuana Facility has been convicted in any state of the manufacture or delivery of a controlled substance designated in Schedule I or Schedule II of Title 21, Chapter II, Part 1308 of the Code of Federal Regulations:
 - a. Once or more within the last five years; or
 - b. Twice or more in the individual's lifetime.
- B. The endorsement issued by the City must include at least the address or other location of the Medical Marijuana Facility and the name of the Person Responsible for the Medical Marijuana Facility.
- C. If an application for a Medical Marijuana Facility Endorsement is denied, the City will notify the applicant in writing of the denial and the reasons for the denial as provided in section 4.05.050B of this Title.

4.20.045 Endorsement Non-Transferable; Notification of Change in Person Responsible

- A. A Medical Marijuana Facility Endorsement is not assignable or transferable.
- B. A Medical Marijuana Facility Endorsement authorizes the operation of the Medical Marijuana Facility only at the location displayed on the endorsement.
- C. If the Medical Marijuana Facility notifies the Oregon Health Authority of a change in the Person Responsible for the Medical Marijuana Facility the Medical Marijuana Facility shall concurrently notify the City of the change and shall apply for a new Medical Marijuana Facility Endorsement.

4.20.050 Inspection

1. The City may conduct a complaint inspection at any time following the receipt of a complaint that alleges that a Medical Marijuana Facility is in violation of any of the terms of this chapter;

2. The City may conduct an inspection at any time city staff have reason to believe that a Medical Marijuana Facility is in violation of any of the terms of this chapter; and
3. If an individual at a Medical Marijuana Facility fails to permit city staff to conduct an inspection, the City may seek an administrative warrant authorizing the inspection.

4.20.055 Revocation

A. The City Manager may revoke a Medical Marijuana Facility Endorsement if:

1. The Person Responsible for the Medical Marijuana Facility knowingly makes a material false statement or omission in connection with the issuance of the endorsement; or
2. The Oregon Health Authority revokes the registration of the Medical Marijuana Facility to which the endorsement has been issued; or
3. The Medical Marijuana Facility transfers usable marijuana or immature plants to an individual who is not a patient or a designated primary caregiver; or
4. The Medical Marijuana Facility accepts a transfer of usable marijuana or immature plants without a valid authorization from the patient; or
5. The Medical Marijuana Facility possesses a mature marijuana plant at the Medical Marijuana Facility; or
6. The Medical Marijuana Facility fails to notify the City Manager of a change in the Person Responsible for the Medical Marijuana Facility and to apply for a new Medical Marijuana Facility Endorsement; or
7. The Medical Marijuana Facility is in violation of any of the terms of the agreement required by section 4.20.025 of this chapter; or
8. City staff discover that the Person Responsible for the Medical Marijuana Facility or any employee of the Medical Marijuana Facility has been convicted in any state of the manufacture or delivery of a controlled substance designated in Schedule I or Schedule II of Title 21, Chapter II, Part 1308 of the Code of Federal Regulations:
 - a. Once or more within the last five years; or
 - b. Twice or more in the individual's lifetime.

B. If a Medical Marijuana Facility Endorsement is revoked, the City will notify

the licensee in writing of the revocation and the reasons for the revocation as provided in section 4.05.050B of this Title, except that revocation of a Medical Marijuana Facility Endorsement will take effect immediately upon revocation of the Medical Marijuana Facility's registration by the Oregon Health Authority.

- C. Notwithstanding section 4.05.050 of this Title, a business license with a Medical Marijuana Facility Endorsement will not be revoked solely for violation of federal laws regarding the manufacture, delivery, or possession of marijuana if the conduct that violates federal law is allowed under ORS 475.300 through ORS 475.346.

4.20.060 Appeal

The decision by the City Manager to deny or revoke a Medical Marijuana Facility Endorsement may be appealed to the City Council as provided in Section 4.05.060 of this Title. Appeal of the City Council's denial or revocation of a Medical Marijuana Endorsement shall be by writ of review filed in the Circuit Court of Lincoln County.

4.20.065 Violation

Violation of any of the provisions of this chapter is a civil infraction with a maximum penalty of \$500.00. Each day during which a violation occurs constitutes a separate offense. Violations of separate provisions of this chapter constitute separate infractions. The penalties imposed by this section are in addition to and not in lieu of any other remedies available to the City.

Section 2. Severability

Each section of this ordinance, and any part thereof, is severable. If any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of this ordinance shall remain in full force and effect.

Section 3. Repeal of Ordinance No. 2063

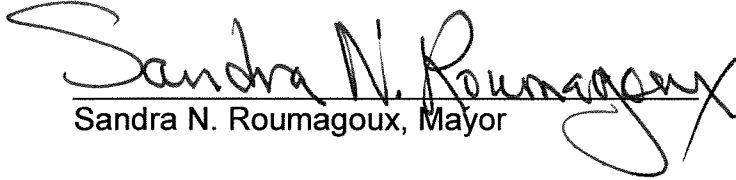
Ordinance No. 2063, "An Ordinance Declaring a Moratorium on Medical Marijuana Facilities and Declaring an Emergency" is hereby repealed.

Section 4. Effective Date

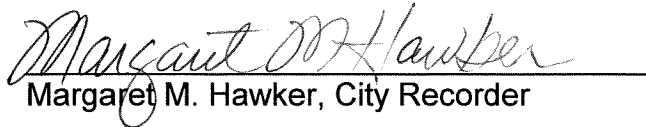
This ordinance shall take effect 30 days after passage.

Date adopted and read by title only: July 21, 2014

Signed by the Mayor on July 22, 2014.


Sandra N. Roumagoux, Mayor

ATTEST:


Margaret M. Hawker, City Recorder